

Message Text

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TAGS:EAIR, UK, FR

SUBJECT: FOLLOWING FOR INFORMATION IS TEXT OF STATEMENT
BY W.P. SHOVELTON, LEADER, UK CIVAIR DELEGATION, RE
CONCORDE, MADE FORMALLY IN PLENARY, AFTERNOON, APRIL 7.

"1. I HAVE MADE A FEW PASSING REFERENCES IN THESE NEGOTIA-
TIONS TO THE PROBLEM OF CONCORDE. IN THE MAIN THE MATTER
HAS BEEN RAISED, AS IS WELL KNOWN, IN OTHER QUARTERS.
HOWEVER, I WOULD NOW LIKE TO RAISE THE SUBJECT WITH YOU
AND YOUR COLLEAGUES IN MUCH GREATER DETAIL WITHIN THE
CONTEXT OF THE AIR SERVICES AGREEMENT RENEGOTIATION.

"2. CONCORDE, UNLIKE THE OTHER MAJOR ISSUES WE ARE RAIS-
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ING IN THESE NEGOTIATIONS, IS NOT AN ISSUE WHERE WE ARE
SEEKING ANY REVISION OF SUBSTANCE IN THE TEXT OF THE
BERMUDA AGREEMENT. THE BERMUDA AGREEMENT IS NOT
DEFECTIVE IN REGARD TO CONCORDE. WHAT HAS BEEN SERIOUSLY
DEFECTIVE IS THE WAY IN WHICH THE AGREEMENT HAS BEEN
IMPLEMENTED BY THE UNITED STATES.

"3. I AM SURE THAT I DO NOT NEED TO REMIND YOU AS A
LAWYER THAT IT IS ONE OF THE FIRST PRINCIPLES OF INTER-
NATIONAL LAW THAT A PARTY TO A TREATY MAY NOT INVOKE THE

PROVISIONS OF ITS DOMESTIC LAW FOR ITS FAILURE TO PERFORM THAT TREATY. THIS RULE IS NOW CODIFIED IN ARTICLE 27 OF THE VIENNA CONVENTION ON THE LAW OF TREATIES, WHICH WAS SIGNED BY YOUR GOVERNMENT IN 1970. YET IN ORDER TO SECURE THE EXERCISE OF THEIR RIGHTS UNDER THE BERMUDA AGREEMENT TO FLY DULY CERTIFICATED EQUIPMENT ON AGREED SERVICES ON SPECIFIED ROUTES OUR AIRLINES HAVE BEEN OBLIGED TO NEGOTIATE WITH, AND TO BRING COURT ACTIONS AGAINST, A LOCAL AUTHORITY WHICH IS NOT A PARTY TO THE AGREEMENT AND WHICH IS NOT GIVEN ANY POWERS UNDER THE AGREEMENT. MEANWHILE THE FEDERAL GOVERNMENT HAVE STOOD IDLY BY. INDEED YOUR PRESIDENT IMPLIED IN HIS RECENT STATEMENT THAT IT WAS NO RESPONSIBILITY OF HIS - EVEN THOUGH HE ACCEPTED THAT A TRIAL FOR CONCORDE SHOULD TAKE PLACE. ALTHOUGH WE HAVE ASKED FOR ACTIVE ASSISTANCE IN THIS LITIGATION THIS HAS NOT AS YET BEEN FORTHCOMING. WE HAVE BEEN TOLD REPEATEDLY THAT THIS RAISES CONSTITUTIONAL DIFFICULTIES FOR THE US GOVERNMENT. YOUR GOVERNMENT DOES NOT DISPUTE WHAT WE SAY ABOUT OUR RIGHTS UNDER THE BERMUDA AGREEMENT - BUT WE CONTINUE TO BE DENIED THESE RIGHTS.

"4. YOU WILL NO DOUBT BE FAMILIAR WITH OUR POSITION FROM THE FORMAL DOCUMENTS WE HAVE SUBMITTED TO THE STATE DEPARTMENT. THERE HAVE BEEN THREE OF THESE - THE WRITTEN REPLIES OF THE FRENCH AND BRITISH GOVERNMENTS TO LIMITED OFFICIAL USE
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THE QUESTIONS RAISED BY SECRETARY COLEMAN IN REGARD TO THE TREATY OBLIGATIONS OF THE UNITED STATES, THE AIDEMEMOIRE BY THE GOVERNMENTS OF FRANCE AND THE UNITED KINGDOM SUBMITTED TO THE UNITED STATES COURT OF APPEALS LAST APRIL, AND THE JOINT STATEMENT OF THE GOVERNMENTS OF THE UNITED KINGDOM AND FRANCE SUBMITTED TO THE US DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK LAST DECEMBER. ALL OF THESE WERE TRANSMITTED THROUGH OR COPIED TO THE STATE DEPARTMENT. BUT SO THAT THERE SHOULD BE NO MISUNDERSTANDING OF OUR POSITION I WOULD LIKE TO STRESS CERTAIN POINTS. WE DO NOT DISPUTE THAT OUR CARRIERS ARE BOUND TO CONFORM TO YOUR LAWS AND REGULATIONS. WE DO NOT DISPUTE THAT THESE LAWS AND REGULATIONS MAY INCLUDE REGULATIONS RELATING TO NOISE. WE DO NOT ARGUE THAT ARTICLE 5 OF THE BERMUDA AGREEMENT APPLIES ONLY TO FEDERAL LAWS AND REGULATIONS. IT MAY BE ENTIRELY APPROPRIATE THAT NOISE REGULATIONS SHOULD BE LAID DOWN BY A LOCAL AUTHORITY OR AIRPORT PROPRIETOR, AND IF THIS IS THE CASE THE CARRIERS ARE BOUND TO CONFORM TO THEM UNDER ARTICLE 5. BUT WE DO SAY VERY STRONGLY THAT ARTICLE 5 DOES NOT IMPLY THAT A LOCAL AUTHORITY MAY REVOKE OR LIMIT ROUTE RIGHTS WHICH HAVE BEEN BOUGHT AND SOLD BY A CONTRACTING PARTY, NOR DOES IT IMPLY

THAT A LOCAL AIRPORT OPERATOR MAY REVOKE OR LIMIT ROUTE RIGHTS BEFORE THE CARRIERS HAVE FAILED IN ANY WAY TO

COMPLY WITH LOCAL LAWS AND REGULATIONS. ARTICLE 5 AND 6 OF THE BERMUDA AGREEMENT MUST BE READ TOGETHER, AND THEIR EFFECT IS THAT WHERE A CARRIER HAS FAILED TO COMPLY WITH LOCAL LAWS AND REGULATIONS, THE CONTRACTING PARTY IN THIS CASE THE UNITED STATES OF AMERICA - MAY UNDER ARTICLE 6 WITHHOLD OR REVOKE HIS ROUTE RIGHTS - ON A PROPORTIONAL BASIS OF COURSE.

"5. LET ME REMIND YOU IN THE BAREST OUTLINE OF OUR EXPERIENCE WHEN WE SOUGHT TO INTRODUCE CONCORDE - NEW LIMITED OFFICIAL USE
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EQUIPMENT HAVING A UK CERTIFICATE OF AIRWORTHINESS WHICH THE UNITED STATES IS BOUND BOTH UNDER THE CHICAGO CONVENTION AND UNDER THE BERMUDA AGREEMENT TO RECOGNISE. WE WERE TOLD THAT WE MUST COMPLY WITH THE PROLONGED PROCEDURES PRESCRIBED BY THE NATIONAL ENVIRONMENTAL PROTECTION ACT. IT WAS, AND INDEED HAS ALWAYS BEEN OUR PRIME OBJECTIVE TO CONVINCE THE UNITED STATES THAT CONCORDE IS ENVIRONMENTALLY ACCEPTABLE AND SO, FORMALLY RESERVING OUR RIGHTS UNDER THE AIR SERVICES AGREEMENT, WE COMPLIED. OVER A YEAR WAS SPENT IN THESE PROCEDURES. FINALLY SECRETARY COLEMAN DECIDED THAT THERE WAS NO APPLICABLE LAW OR REGULATION WITH WHICH CONCORDE WOULD NOT COMPLY ON FLIGHTS TO WASHINGTON AND NEW YORK, AND HE AUTHORISED CONCORDE FLIGHTS FOR A TRIAL PERIOD OF SIXTEEN MONTHS. WE DID NOT CONSIDER THAT THIS DECISION FULLY COMPLIED WITH THE INTERNATIONAL OBLIGATIONS OF THE UNITED STATES, AND AGAIN WE RESERVED OUR POSITION, BUT WE WELCOMED THE OPPORTUNITY TO DEMONSTRATE THE ENVIRONMENTAL ACCEPTABILITY OF CONCORDE IN COMMERCIAL FLIGHTS AND SO IN DUE COURSE CONCORDE WAS INTRODUCED ON FLIGHTS TO DULLES AIRPORT. IN A FEW WEEKS CONCORDE WILL HAVE BEEN FLYING INTO DULLES AIRPORT FOR A YEAR AND YOU WILL BEGIN YOUR APPRAISAL OF THE DATA OBTAINED DURING THAT PERIOD AND WILL DECIDE WHETHER YOU ARE WILLING TO AUTHORIZE CONCORDE FLIGHTS INTO DULLES ON AN INDEFINITE BASIS. WE UNDERSTAND THAT YOU CANNOT AT PRESENT GIVE US ANY GUARANTEE OF THE OUTCOME OF THIS REVIEW. BUT YOU ON YOUR SIDE WILL I HOPE REALISE THE VERY GREAT POLITICAL DIFFICULTY THAT WE SEE IN SIGNING A NEW AIR SERVICES AGREEMENT WHEN THERE REMAINS THE DANGER THAT WITHIN A FEW MONTHS YOUR GOVERNMENT MIGHT REVOKE LANDING RIGHTS FOR CONCORDE. I AM SURE YOU ARE FULLY AWARE THAT THIS WOULD CAUSE AN OUTCRY IN BRITAIN AND FRANCE. WE ARE NOT ASKING FOR ANY SPECIAL PROVISIONS FOR CONCORDE IN THE NEW AGREEMENT. THEY ARE NOT NECESSARY. BUT WE HAVE NEVER MADE ANY LEGAL ADMISSION THAT YOU WERE ENTITLED TO DENY CONCORDE RIGHTS

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UNDER THE NEW AGREEMENT EXCEPT ON THE BASIS OF A FINDING-
MADE IN A NON-DISCRIMINATORY MANNER - IE THAT IT DOES

NOT COMPLY WITH YOUR LAWS AND REGULATIONS.

"6. I TURN NOW TO THE MUCH MORE SERIOUS PROBLEM OF
NEW YORK. THE DECISION OF SECRETARY COLEMAN GAVE OUR
AIRLINE THE AUTHORISATION OF YOUR GOVERNMENT TO FLY
CONCORDE ON THE ROUTE FROM LONDON TO NEW YORK WHICH IS,
OF COURSE, ONE OF THE SPECIFIED ROUTES UNDER THE
BERMUDA AGREEMENT. YET WHEN OUR AIRLINE ANNOUNCED ITS
INTENTION OF COMMENCING SERVICES IN ACCORDANCE WITH THIS
AUTHORISATION IT WAS FRUSTRATED BY A RESOLUTION OF THE
PORT AUTHORITY OF NEW YORK AND NEW JERSEY TO THE EFFECT
"THAT THE PORT AUTHORITY DENY PERMISSION TO OPERATE ANY
SUPERSONIC AIRCRAFT, INCLUDING THE CONCORDE, AT KENNEDY
INTERNATIONAL AIRPORT UNTIL A STUDY BASED ON SIX MONTHS
OF OPERATING EXPERIENCE AT DULLES, HEATHROW AND DE GAULLE
AIRPORTS IS COMPLETED BY THE PORT AUTHORITY'S DIRECTOR
OF AVIATION, AND PENDING FURTHER ACTION THEREON BY THE
BOARD. THE PORT AUTHORITY, AND GOVERNOR CAREY, HAVE
TAKEN THE POSITION THAT THEY ARE ENTITLED TO LIMIT THE
LANDING RIGHTS OF BRITISH AIRWAYS ON A ROUTE GUARANTEED
UNDER THE BERMUDA AGREEMENT UNTIL THE AIRLINES HAVE
PROVED BEYOND REASONABLE DOUBT THAT THEIR OPERATIONS WITH
CONCORDE WILL NOT INFRINGE THE REGULATIONS OF THE PORT
AUTHORITY. THIS BEARS NO RELATION TO THE TERMS OF THE
BERMUDA AGREEMENT. OUR AIRLINES HAVE SOUGHT TO PERSUADE
THE PORT AUTHORITY THAT THEIR OPERATIONS WOULD NOT
INFRINGE AIRPORT REGULATIONS ANY MORE THAN OTHER AIRCRAFT
WHICH ARE NOW ADMITTED. AFTER DISCUSSION WITH THE
FEDERAL GOVERNMENT THEY BROUGHT A LEGAL ACTION IN THE
COURTS TO CHALLENGE THE LEGALITY OF THE PORT AUTHORITY
BAN. WE UNDERSTAND THE REASONS WHY THE FEDERAL GOVERNMENT
ARE RELUCTANT TO PRE-EMPT IN FULL THE POWERS OF AIRPORT
PROPRIETORS, AND THE UNCERTAINTY OF THE LAW IN THIS AREA.

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BUT WE HAVE RIGHTS UNDER OUR AIR SERVICES AGREEMENT -
WHICH YOU HAVE NOT FORMALLY DISPUTED - AND WE BELIEVE
WE ARE ENTITLED TO YOUR SUPPORT IN GIVING EFFECT TO THEM.
WHATEVER THE POWERS OF AIRPORT PROPRIETORS WHERE AN
INTERNATIONAL AGREEMENT IS NOT INVOLVED IT CANNOT BE
RIGHT THAT YOU SHOULD BUY AND SELL ROUTES AND THEN TELL
A DESIGNATED AIRLINE THAT HIS ROUTE IS WORTH ONLY SO MUCH
AS A LOCAL AIRPORT PROPRIETOR THINKS FIT. IF THIS WERE

INDEED THE POSITION UNDER DOMESTIC LAW - AND I SHOULD MAKE CLEAR THAT OUR AIRLINES ARE ARGUING STRONGLY THAT IT IS NOT - YOUR DOMESTIC LAW WOULD QUITE SIMPLY NOT ACCORD WITH THE INTERNATIONAL OBLIGATIONS YOU ASSUME WHEN YOU GRANT ROUTE RIGHTS.

"7. I WOULD ASK YOU THEREFORE TO RECONSIDER MOST SERIOUSLY WHETHER YOU CANNOT GIVE US THE HELP FOR WHICH

WE HAVE ASKED IN THE CONTEXT OF THE NEW YORK ACTION. WE HAVE ASKED THE STATE DEPARTMENT TO ASSIST US BY PASSING TO THE COURT A STATEMENT WHICH WOULD MAKE CLEAR THAT YOU ENDORSE THE POSITION ON OUR TREATY RIGHTS WHICH WE HAVE ADOPTED BEFORE THE US DISTRICT COURT. WE HAVE MOST CAREFULLY STUDIED SECRETARY COLEMAN'S AVIATION NOISE ABATEMENT POLICY STATEMENT AND WE HAVE NOTED THAT WHERE A USE RESTRICTION IMPOSED BY A LOCAL AIRPORT PROPRIETOR IS CONSIDERED BY THE FAA TO BE UNJUSTLY DISCRIMINATORY OR A SIGNIFICANT DISRUPTION OF THE AIR TRANSPORTATION SYSTEM OF THE UNITED STATES, IT WAS ENVISAGED THAT THE UNITED STATES WOULD INSTITUTE OR SUPPORT LITIGATION CHALLENGING AN UNACCEPTABLE USE RESTRICTION. A BAN IMPOSED CONTRARY TO THE TERMS OF AN INTERNATIONAL AGREEMENT WITH THE UNITED KINGDOM SEEMS TO US TO AMOUNT TO A SIGNIFICANT DISRUPTION OF THE AIR TRANSPORTATION SYSTEM OF THE UNITED STATES. AND I UNDERSTAND THAT SECRETARY COLEMAN WAS INDEED CONSCIOUS OF THE PROBLEMS WHICH MIGHT ARISE IN THIS AREA WHERE INTERNATIONAL OBLIGATIONS WERE LIMITED OFFICIAL USE
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INVOLVED. IF EVEN NOW YOU WOULD GIVE US THE SUPPORT WHICH YOU ARE AWARE WOULD GREATLY ASSIST US BEFORE THE COURT THIS WOULD BE AN EARNEST OF YOUR GOOD FAITH AND WOULD INDEED CONVINCE US THAT YOU ARE USING YOUR BEST EFFORTS TO ENSURE THAT OUR AIRLINES ARE NOT DENIED THE TEST PERIOD AT NEW YORK WHICH YOU YOURSELF HAVE PRESCRIBED AND WHICH IN THE CONTEXT OF THIS ACTION IS ALL THEY SEEK.

"8. I AM TABLING A REVISED VERSION OF ARTICLE 5 OF THE BERMUDA AGREEMENT WHICH WE HAVE PREPARED IN THE LIGHT OF THE PREFERENCE WHICH YOU EXPRESSED DURING THE LAST ROUND IN LONDON FOR INCLUDING A TEXT ON THE LINES OF ARTICLE 5. IN ONE RESPECT THIS PROVISION IS WIDER THAN ARTICLE 5 OF BERMUDA IN THAT THE LAWS AND REGULATIONS WITH WHICH CARRIERS MUST COMPLY ARE NOT LIMITED IN THE OLD WAY. FOR EXAMPLE OUR CARRIERS MUST COMPLY WITH LAWS RELATING TO DOING BUSINESS, WITH PLANNING LAWS, WITH THE CRIMINAL LAW - NONE OF WHICH ARE EXPRESSLY MENTIONED IN BERMUDA - THOUGH I AM SURE THAT THIS OBLIGATION IS IMPLIED. OUR NEW ARTICLE 5 HOWEVER SPELLS OUT THE LIMITS ON LAWS AND REGULATIONS WHICH ARE CLEARLY PRESCRIBED BY

INTERNATIONAL LAW. LAWS AND REGULATIONS MUST BE APPLIED IN GOOD FAITH, THEY MUST NOT NULLIFY OR UNDERMINE THE RIGHTS GRANTED UNDER THE AGREEMENT, AND THEY MUST BE NON-DISCRIMINATORY. THESE LIMITATIONS ARE IMPLIED IN THE TEXT OF ARTICLE 5 OF THE BERMUDA AGREEMENT, BUT WE SEE ADVANTAGE FOR THE AVOIDANCE OF DOUBT, AND BECAUSE THIS AGREEMENT WILL BE USED ELSEWHERE AS A PRECEDENT, IN SPELLING THEM OUT IN THIS WAY. IN OUR VIEW THERE IS NO DOUBT THAT THE PRESENT BAN IMPOSED BY THE PORT AUTHORITY COULD NOT BE JUSTIFIED UNDER INTERNATIONAL LAW BECAUSE IT UNDERMINES TOTALLY THE RIGHT OF OUR DESIGNATED CARRIER BRITISH AIRWAYS TO FLY CERTIFICATED EQUIPMENT ON THE NEW YORK ROUTE.

"9. A FEW WEEKS AGO THE LONDON TIMES, COMMENTING IN A LIMITED OFFICIAL USE
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LEADER ABOUT THIS RENEGOTIATION ON THE DENIAL OF CONCORDE LANDING RIGHTS AT NEW YORK, SAID IT IS POINTLESS EVEN TO TRY TO NEGOTIATE A NEW AGREEMENT IF THE OTHER PARTNER IS NOT WILLING OR ABLE TO IMPLEMENT THE PRESENT ONE ON MATTERS WHICH ARE INCONVENIENT. THIS WAS A HARD ASSESSMENT AND I HOPE THAT YOU WILL EARNESTLY RECONSIDER YOUR POSITION AND GIVE US THE ASSISTANCE WE ARE SURELY AFTER SUCH LONG PATIENCE ENTITLED TO EXPECT."
VANCE

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